

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRESENIUS MEDICAL CARE HOLDINGS,  
INC., et al.,

No. C 03-01431 SBA

Plaintiff.

**ORDER**

v.

[Docket No. 808]

BAXTER INTERNATIONAL, INC., et al.,

Defendants.

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This matter comes before the Court on defendant Baxter International, Inc. and Baxter Healthcare Corporation's (collectively, "Defendants") Motion for Judgment as a Matter of Law pursuant to Federal Rule of Civil Procedure 50(a) ("Defendants' Motion") [Docket No. 808], filed on June 26, 2006.

Plaintiffs Fresenius Medical Care Holdings, Inc. and Fresenius USA, Inc.'s ("Plaintiffs") filed their opposition on June 27, 2006.

Having read and considered the arguments presented by the parties in the papers submitted to the Court, the Court finds this matter appropriate for resolution without a hearing.

IT IS HEREBY ORDERED THAT for the reasons stated on the record, Defendants' Motion is GRANTED IN PART AS UNOPPOSED with respect to the issues of invalidity for nonjoinder of an inventor and for improper derivation.


IT IS FURTHER ORDERED THAT for the reasons stated on the record, Defendants' Motion is DENIED IN PART with respect to the issues of inequitable conduct. As stated on the record, Federal Rule of Civil Procedure 50(a) applies only to matters that are tried to a jury with the power to return a binding verdict. Rule 50(a) does not apply to matters, such as Plaintiffs' defenses of inequitable conduct,

1 which are tried to the Court using the jury only in advisory capacity. Such matters are governed,  
2 instead, by Federal Rule of Civil Procedure 52(c).

3 With respect to the obviousness issues, for the reasons stated on the record and specifically given  
4 the duration of this trial, the complexity of the issues, the arguments made in support of and in  
5 opposition to the motion, and the likelihood that there will be further review of these issues, wisdom and  
6 expediency counsel that the best course is to reserve ruling on the Motion as it applies to the  
7 obviousness issues and to send those matters to the jury for deliberation. Accordingly, IT IS FURTHER  
8 ORDERED THAT the Court RESERVES JUDGMENT IN PART with respect to the obviousness issues  
9 raised in Defendants' motion.

10  
11 IT IS SO ORDERED.

12  
13 Dated: 6/28/06

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge